APTS
Association of Public Television Stations

March 31, 2006

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation, CS Docket No. 98-120; 00-96

Dear Ms. Dortch:

The Association of Public Television Stations ("APTS") hereby notifies the Commission of the following *ex parte* meeting in the above captioned proceedings. On March 30, 2006, Lonna Thompson, Vice President and General Counsel, and Andrew Cotlar, Associate General Counsel met with Ben Bartolome, Eloise Gore, Rosemary Harold, Bill Johnson, Deborah Klein, and Mary Beth Murphy of the Media Bureau. The participants discussed digital carriage for public television stations on satellite. Attached are the materials that were distributed at the meeting.

Sincerely,

/s/ Lonna Thompson
Lonna Thompson
Vice President and General Counsel

Discriminatory Digital Carriage on Direct Broadcast Satellite Violates Federal Law

Evidence of Discriminatory Carriage

- Trade press reports confirm that DIRECTV and EchoStar are carrying in selected markets only the local digital signals of certain commercial stations without carrying the local digital signals of public television stations.

How this Practice Violates Federal Law

- These actions violate the "carry-one/ carry-all" provisions of the SHVIA as amended if, as is likely, DIRECTV and EchoStar are availing themselves of the benefits of the compulsory copyright license for carriage of local television digital broadcast stations.
- SHVIA and the Copyright Act are structured so that a violation of the "carry-one/ carry-all" provision of SHVIA necessarily entails a violation of the compulsory copyright license and vice versa.
- Satellite carriers cannot therefore take the benefit of the compulsory license without the corresponding carriage obligations.

SHVIA's Carry-One/Carry-All Provision Governs the Carriage of Digital Signals

- The plain language of SHVIA applies to any full power television signals with no exceptions for digital signals. The Copyright Act also contains neutral language of general applicability.
  - Both laws reference all "over-the-air, commercial or noncommercial television broadcast station(s) licenses by the Federal Communications Commission under subpart E of part 73 of title 47." (See 17 U.S.C. § 122(j)(5) and 47 U.S.C. § 338(k)(8)).
  - The only exemption specified is low power or translator stations.
  - Digital stations are not exempt in the plain language of the law.
- Additionally, Section 338 refers to carriage of local broadcast "signals" which the FCC made clear includes both HD and multicast SD in its August 23, 2005 order relating to satellite digital carriage in Alaska and Hawaii. Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act, Report and Order, FCC 05-159, ¶ 16 (August 23, 2005) (interpreting 47 U.S.C. § 338(a)(4) as amended by Pub. L. No, 108-447, § 210, 118 Stat. 2809 (2004)).

The Harm of Discriminatory Carriage

- Non-carriage on satellite significantly harms public television stations and the DBS viewers who wish to receive quality, noncommercial educational digital programming.

Satellite Capacity is Continuing to Expand

- In previous filings, APTS has demonstrated that satellite carriers have plans to carry and will soon possess sufficient technical capacity to carry the digital signals of local television broadcasters in each market. See Association of Public Television Stations, "The Case for Satellite Carriage of Digital Television Broadcast Signals," Docket No. 98-120 (October 26, 2005).
- A recent Wall Street Journal article, which is attached, demonstrates that at least one satellite company – EchoStar—is planning over the next decade to build out its satellite fleet to such an extent that it may begin to wholesale its orbital capacity to other companies.
- Both EchoStar and DIRECTV are therefore technically capable of carrying local digital public television stations.

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TECHNOLOGY

EchoStar Pursues a Strategy Shift

Cost-Conscious CEO Ergen To Boost Satellite Spending, May Lease Extra Capacity

By Andy Pasztor

EchoStar Communications Corp. is pursuing a new strategy that envisions investing more than $1.6 billion to dramatically increase its satellite fleet over the next few years, with plans to potentially lease some of the extra capacity to other companies.

The Englewood, Colo., broadcaster, which is best known for operating the Dish television service in the U.S., also disclosed in a recent regulatory filing that it has switched to **Loral Space & Communications** Inc. from **Lockheed Martin** Corp. as the mainstay of its stepped-up spacecraft-acquisition plan. An EchoStar spokeswoman declined to elaborate.

The new direction indicates that EchoStar's chairman and chief executive, Charles Ergen, renowned for controlling costs and minimizing capital outlays, has decided to ratchet up spending in the face of mounting competition. Rival cable and satellite-television services, for example, are investing in facilities to provide high-definition video programming.

At the same time, industry analysts and consultants said Mr. Ergen seems to be hedging his bet by positioning EchoStar to become a wholesale provider of orbital capacity able to compete with traditional satellite operators such as **Intelsat** Ltd. of Bermuda, and Luxembourg's **SES Global** SA.

So far, EchoStar has primarily built satellites to serve its more than 12 million subscribers, and it previously signed up to use additional capacity on other satellites operated by SES Global's U.S. unit. But with its new strategy calling for a total of at least another nine wholly owned or leased satellites supporting its expansion program into the next decade, EchoStar would have greater flexibility to move outside the company's core satellite-to-home broadcast niche.

> EchoStar would have more flexibility to move outside its satellite-to-home broadcast niche.

"In addition to our [satellite-television] business plan," EchoStar said last week in an SEC filing, "we are exploring business plans" for additional satellites at as many as five orbital slots. In a conference call with investors after the document was filed, company executives hinted they are considering branching into other industry segments.

Some of the new satellites are intended as replacement and supplemental capacity "to allow EchoStar to leapfrog cable-television providers" in beaming down high-definition programs to households, according to Vijay Jayant, an analyst with Lehman Brothers Holdings Inc. But if the appetite for such content fails to take off, Mr. Jayant said, EchoStar "has looked at the cost-benefit analysis" and decided "it also can become a satellite player" in the wholesale arena.

While other analysts predict EchoStar's internal needs will absorb nearly all the extra capacity, Jimmy Schaeffler, an industry consultant with Carmel Group, said the EchoStar filing reveals "the beginning of a major shift in strategy." Mr. Ergen has decided "he can be a middleman in wholesaling incremental capacity and still do quite well."

The spending plan laid out in EchoStar's filing projects roughly $500 million more in satellite-related obligations through the end of the decade than the total included in a year-earlier filing. With an overall price tag approaching $3 billion into the next decade, the latest plan also relies on eventually buying five more-versatile satellites from Loral, instead of a pair of spacecraft previously listed as on order from Lockheed.

The most recent filing, which doesn't mention the Lockheed orders, says that, during the fourth quarter of 2005, "we changed satellite vendors and submitted the revised contracts" to U.S. regulators. It doesn't give any reason for the shift.

A spokesman for Lockheed of Bethesda, Md., said it still has "two open satellite contracts" with EchoStar but declined to elaborate. A spokeswoman for New York-based Loral said, "We are performing in accordance with the milestones" required in the contracts but declined to provide details.

Samsung Offers Chips to Replace PC Hard Drives

By Evan Ramstad

Samsung Electronics Co. said it began offering computer makers a set of flash-memory chips that are designed to replace hard drives in personal computers. But the price for the chips is so high it may take years to make a difference in the design of PCs.

The company, which is the leading maker of a type of flash-memory chips called NAND, is offering the chipsets first for notebook PCs. Samsung didn't release a specific price for the chipset. A spokeswoman said it expects a 32-gigabyte flash-storage chipset will sell for between $200 and $250 in 2008.

PC makers today can buy hard drives of 40 and 60 gigabytes for between $50 and $60. By 2008, hard-drive makers probably will be able to offer drives that are 120 and 150 gigabytes for that price range, said Jim Porter, an independent data-storage-market analyst in Mountain View, Calif.

Web-Feet Research, a market-research firm in Monterey, Calif., forecasts the market for flash-based chipsets that substitute as hard drives to be about 500,000 units this year, rising to 1.9 million units in 2008. Samsung cited the research in announcing its chipset at an event in Taiwan, where the biggest contract designers and makers of notebook PCs are based.

Flash chips have the advantage of consuming less power than hard drives, a plus for energy-conscious notebook users. Samsung's 32-gigabyte NAND flash-storage product is about five centimeters across, the same size as many hard drives used in notebook PCs. It weighs 15

... Without Heavy Metals